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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,945	01/07/2004	Michael J. Hawthorne	509/39471D	3605

7590 05/11/2004

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EXAMINER

ARTHUR JEANGLAUDE, GERTRUDE

ART UNIT

PAPER NUMBER

3661

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

**Application No.**

10/751,945

**Applicant(s)**

HAWTHORNE, MICHAEL J.

**Examiner**

Gertrude Arthur-Jeanglaude

**Art Unit**

3661



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5032004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, are rejected under 35 U.S.C. 103(a) as being unpatentable over Horst et al. (U.S. Patent No. 6,658,331) in view of Hawthorne (U.S. Patent No. 6,263,266).

As to claim 1, Horst et al. disclose a remote control locomotive device comprising an operator input for generating locomotive commands; (See abstract, lines 1-4); a transceiver (RF transmitter 218 as shown in Fig. 2; also receiver col. 10, line 67-col. 11, lines 1-3) for transmitting the locomotive commands to a locomotive; a display (See abstract, lines 5-8); and a program (506) on the device for determining and driving the display to show the location of the locomotive on the track. Though Horst et al. do not specifically disclose a portable remote control locomotive device, it discloses a portable unit allowing a ground based operator to remotely control a locomotive (See col. 1, lines 15-17). Therefore it is known to have a portable remote control locomotive device. Horst et al. fail to specifically disclose a data base of at least a track profile stored on the device. In an analogous art, Hawthorne et al. disclose a track profile database (See Fig. 6. It would have been obvious to one of ordinary skill in the art at the time of the



Art Unit: 3661

invention to modify the system of Horst et al. with that of Hawthorne et al. by having a track profile database in order to optimize train operation.

As to claim 2, Horst et al. disclose a program (506) as shown in Fig. 5 that is capable of determining and driving the display to show the location and the forces in a train including the locomotive (See col. 10, lines 56-66).

As to claim 3, Horst et al. disclose the transceiver receives and provides locomotive telemetry to the program (See col. 10, lines 56-66).

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horst et al. (U.S. Patent No. 6,658,331) in view of Hawthorne (U.S. Patent No. 6,263,266) and further in view of Hawthorne (U.S. Patent No. 6,480,766).

As to claims 4-5, Horst et al. does not specifically disclose that the telemetry includes global positioning data. In an analogous art, Hawthorne et al. (766) disclose a global positioning system and global positioning data wherein the system communicating with the program (See abstract, Figs. 1B, 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Horst et al. with that of Hawthorne et al. by having a global positioning system and data communicating with the program in order to provide position determining along the train.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horst et al. (U.S. Patent No. 6,658,331) in view of Hawthorne (U.S. Patent No. 6,263,266) and further in view of Flynn et al. (US Pub No. 2003/023664 A1).



Art Unit: 3661

As to claims 6-8, Horst et al. discloses a memory 504 to store locomotive location and a transmitter (218, Fig. 2) and receiver wherein the transceiver receives and provides locomotive telemetry from other transmitters to the program, and the program drives the display to show the locations of the other transmitters (See col. 10, line 67-col. 11, lines 1-3) Horst et al. fail to specifically disclose that the program stores the location and other information of the locomotive for later playback. In an analogous art, Flynn et al. disclose a remote control locomotive simulator wherein it discloses as shown in Fig. 4 a recording and playback (54). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Horst et al. and Hawthorne et al. with that of Flynn et al. by storing the location and other information of the locomotive for later playback in order to manage and create a database of operator performance and provide tools to organize both playback type data and result type data for future reference.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Horst et al.	US 2004/0064223 A1
Proulx	US 2003/0144772 A1
Proulx	US 6691005 B2



Art Unit: 3661

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gertrude Arthur-Jeanglaude whose telephone number is (703) 308-7564. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GAJ

*GAJ*

May 5, 2004

*Gertrude A. Jeanglaude*  
GERTRUDE A. JEANGLAUE  
PRIMARY EXAMINER